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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

FRED JEAN, Individually and on
Behalf of All Others Similarly
Situating,

Plaintiff,

STEC, INC., MANOUCH
MOSHAYEDI and MARK
MOSHAYEDI,

Defendants.

CASE NO. SACV 09-1304 JVS(MLGx)

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION OF JONATHAN FISCHER
FOR APPOINTMENT AS LEAD
PLAINTIFF AND FOR APPROVAL
OF HIS SELECTION OF CO-LEAD
COUNSEL**

Date: February 22, 2010

Time: 1:30 p.m.

Ctrm: 10C

Judge: Honorable James V. Selna

I. PRELIMINARY STATEMENT

Plaintiff Jonathan Fischer (“Movant”), respectfully submits this memorandum of law in support of his motion to (i) appoint Movant as Lead Plaintiff in this action; (ii) approve Movant’s selection of the law firms of Weiss & Lurie and Stull, Stull & Brody to serve as Co-Lead Counsel; and (iii) grant such other and further relief as the Court may deem just and proper.

At least six securities fraud class actions have been filed in this District on behalf of persons who purchased or otherwise acquired the publicly traded securities of STEC, Inc. (“STEC” or the “Company”) between June 16, 2009 and November 3, 2009 (the “Class Period”). The parties currently are negotiating a stipulation to consolidate these related actions:

CASE NAME	CASE NO.	DATE FILED
<i>Jean v. STEC, Inc., et al.</i>	SACV-09-1304 JVS (MLGx)	November 6, 2009
<i>Sakhai v. STEC, Inc., et al.</i>	SACV 09-1306 JVS (MLGx)	November 6, 2009
<i>Greenwald v. STEC, Inc., et al.</i>	SACV 09-1315 JVS (MLGx)	November 9, 2009
<i>Munter v. STEC, Inc., et al.</i>	SACV 09-1320 JVS (MLGx)	November 10, 2009
<i>Fischer v. STEC, Inc., et al.</i>	CV 09-8536 JVS (MLGx)	November 19, 2009
<i>Weinberger v. STEC, Inc., et al.</i>	SACV 09-1460 JVS (MLGx)	December 11, 2009

Movant, who suffered losses of approximately \$68,530 as a result of his purchases of STEC securities, has the largest financial interest in the outcome of this litigation based on Movant’s current knowledge, and is well-qualified to vigorously prosecute this action on behalf of his fellow class members. Movant also has selected the law firms of Weiss & Lurie and Stull, Stull & Brody, firms experienced and capable in securities class action litigation, to serve as Co-Lead Counsel.

1 Accordingly, Movant should be appointed as Lead Plaintiff and his chosen counsel
2 should be appointed as Co-Lead Counsel.

3 **II. SUMMARY OF PENDING ACTION**

4 This is a securities fraud class action brought on behalf of all persons who
5 purchased or otherwise acquired the publicly traded securities of STEC during the
6 Class Period.¹ The first complaint in this action was filed on November 6, 2009 and
7 seeks to recover damages caused by defendants' violations of §§10(b) and 20(a) of
8 the Securities Exchange Act (the "Exchange Act"), 15 U.S.C. §78j(b) and 78t(a),
9 and Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5. The complaints
10 filed in the related actions allege that defendants violated the federal securities laws
11 by issuing a series of false and misleading statements during the Class Period about
12 the Company's financial condition, products, customers, competitive position and
13 prospects, or omitted material adverse facts required to be disclosed in order to
14 make defendants' statements not misleading. The complaints further allege that
15 defendants' materially false and misleading statements caused STEC shares to trade
16 at artificially inflated prices during the Class Period, and members of the class, who
17 acquired the Company's publicly traded securities at artificially inflated prices, were
18 damaged thereby.

19 STEC designs, manufactures and markets enterprise-class Flash solid state
20 drives ("SSDs") designed to increase the performance of large scale computer
21 storage systems and servers. During the Class Period, defendants' alleged false and
22 misleading statements represented to investors that STEC had no competition in the
23 enterprise-class SSD field and anticipated substantial increases in sales of its Flash
24 SSDs despite a worldwide downturn in the disk-drive business. Fueled by

25
26 ¹The class periods alleged in the *Sakhai*, *Greenwald*, *Munter*, *Fischer* and
27 *Weinberger* complaints begin on June 16, 2009. The class period alleged in the *Jean*
28 complaint begins on August 3, 2009. All alleged class periods end on November 3,
2009. The variation in the alleged class periods may be resolved in an amended
consolidated complaint to be filed after the appointment of lead plaintiff.

1 defendants' statements, the price of STEC stock traded at artificially inflated prices
2 during the Class Period and reached a high of \$41.84 per share on September 10,
3 2009.

4 While the price of STEC stock was artificially inflated by defendants'
5 statements, STEC conducted a secondary stock offering in August 2009.
6 Defendants Manouch Moshayedi and Mark Moshayedi sold approximately 9 million
7 of their STEC shares into the secondary offering for proceeds of approximately
8 \$268 million. The August 2009 secondary stock offering benefitted only defendants
9 Manouch Moshayedi and Mark Moshayedi, who were the only selling shareholders.
10 The Company sold no stock and received no proceeds from the offering.

11 After the securities markets closed on November 3, 2009, defendants
12 announced the Company's third quarter 2009 financial results and outlook for the
13 fourth quarter of 2009. Defendants shocked the market by announcing that one of
14 the Company's largest customers, EMC Corp., would carry 2009 inventory into
15 2010. On this news, the price of STEC stock plummeted more than \$9.00 per share
16 from \$23.15 per share to close at \$14.14 on extraordinarily high trading volume on
17 November 4, 2009. As a result of defendants' alleged false and misleading
18 statements and omissions, Movant and the other members of the class suffered
19 significant losses and were damaged thereby. The price of STEC stock has not
20 recovered, and as of this date trades at approximately \$19.00 per share.

21 **III. ARGUMENT**

22 **A. Movant and His Chosen Counsel Should be Appointed to Lead** 23 **This Litigation**

24 **1. Movant Satisfies All Three Requirements of §21D(a)(3)(B) of** 25 **the PSLRA and Should be Appointed Lead Plaintiff**

26 The PSLRA governs the appointment of a lead plaintiff in "each private
27 action arising under the [Exchange Act] that is brought as a plaintiff class action
28 pursuant to the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(1) and
(a)(3)(B)(i). The Ninth Circuit has interpreted Section 21D of the Exchange Act, as

1 amended by the PSLRA, to set forth a three-step procedure to select a lead plaintiff
2 or plaintiffs to oversee class actions brought under the federal securities laws. *See*
3 *In re Cavanaugh*, 306 F.3d 726, 729-730 (9th Cir. 2002); *see also Apple v. LJ Int'l,*
4 *Inc.*, 2008 U.S. Dist. LEXIS 12618, at *5 (C.D. Cal. Feb. 8, 2008).

5 First, within twenty (20) days after the date on which a class action is filed
6 pursuant to the PSLRA, the plaintiff must publish notice advising class members of
7 the pendency of the action and of their right to move within sixty (60) days of the
8 publication of the notice to be appointed lead plaintiff. *See* §21D(a)(3)(A)(i); 15
9 U.S.C. §78u-4(a)(3)(A)(i).

10 Second, any member or members of the class may move the Court to serve as
11 lead plaintiff no later than sixty (60) days after the notice is published. *See* 15
12 U.S.C. §78u-4(a)(3)(A)(i)(II). The PSLRA provides that the court “must consider
13 the losses allegedly suffered by the various plaintiffs before selecting . . . the
14 ‘presumptively most adequate plaintiff.’” *See Cavanaugh*, 306 F.3d at 730.

15 Third, the court must determine whether the presumptively most adequate
16 plaintiff also otherwise satisfies the requirements of Rule 23 of the Federal Rules of
17 Civil Procedure. *See* 15 U.S.C. §78u-4(a)(3)(B). Moreover, the court must “give
18 other plaintiffs an opportunity to rebut the presumptive lead plaintiff’s showing that
19 it satisfies Rule 23’s typicality and adequacy requirements.” *Cavanaugh*, 306 F.3d
20 at 730; *see also* 15 U.S.C. §78u-4(a)(3)(B)(iii)(II).

21 As demonstrated below, Movant satisfies all three requirements and should be
22 appointed Lead Plaintiff.

23 **a. Notice was Properly Published**

24 Section 21D(a)(3)(A)(i) of the Exchange Act, as amended by the PSLRA,
25 provides in relevant part that the plaintiff must publish, in a widely circulated
26 national business-oriented publication or wire service, a notice advising members of
27 the purported class of the pendency of the action, the claims asserted therein and the
28 purported class period, and further advise that any member of the purported class

1 may move for appointment as lead plaintiff not later than sixty (60) days after
2 publication of the notice. *See* 15 U.S.C. §78u-4(a)(3)(A)(i). Only the plaintiff in
3 the first-filed action must publish notice. *See* 15 U.S.C. §78u-4(a)(3)(A)(ii).

4 Plaintiff Jean, through his counsel, published notice of this action over
5 *Business Wire*, a national business-oriented wire service on November 6, 2009.²
6 The notice advised class members of the pendency of the securities class action
7 lawsuit against STEC and the individual defendants, the claims asserted therein, the
8 class period and their right to move for lead plaintiff within sixty (60) days from the
9 date of the notice. This motion is timely filed within sixty (60) days from
10 publication of the notice on November 6, 2009 and the statutory timing requirement
11 of the PSLRA is satisfied. *See* 15 U.S.C. §78u-4(a)(3)(A)(i).

12 Moreover, the PSLRA directs the court to consider any motions filed in
13 response to the required notice no later than ninety (90) days after the date of
14 publication of the notice or as soon as practicable after the court decides any
15 pending motion to consolidate actions asserting substantially the same claims. *See*
16 15 U.S.C. §78u-4(a)(3)(B)(i)-(ii).

17
18 **b. Movant Possesses the Largest Financial Interest in the
Litigation and Should be Presumed Lead Plaintiff**

19 The PSLRA further provides that the court shall appoint as lead plaintiff the
20 “member or members of the purported plaintiff class that the court determines to be
21 most capable of representing the interests of class members (hereinafter in this
22 paragraph referred to as the ‘most adequate plaintiff’).” 15 U.S.C. §78u-
23 4(a)(3)(B)(i). The PSLRA specifically authorizes any class member, regardless
24 whether the class member has filed a complaint, to move for appointment as lead
25 plaintiff. *See* 15 U.S.C. §78u-4(a)(3)(B)(i).

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27 ²*See* Declaration of Leigh A. Parker in Support of Motion of Jonathan Fischer
28 for Appointment as Lead Plaintiff and for Approval of His Selection of Co-Lead
Counsel (“Parker Decl.”), filed concurrently, Ex. A.

1 During the Class Period, Movant purchased STEC securities at prices inflated
2 by defendants' materially false and misleading statements. As a result, Movant
3 possesses a significant financial interest in the outcome of this litigation.

4 The PSLRA's "most adequate plaintiff" provision also requires this Court to
5 adopt a rebuttable presumption that "the most adequate plaintiff in any private
6 action arising under this title is the person or group of persons" that "in the
7 determination of the court, has the largest financial interest in the relief sought by
8 the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

9 To the best of his current knowledge, Movant has the largest financial interest
10 in the relief sought in this case. *See Parker Decl., Ex. B.*

11 Movant suffered losses of approximately \$68,530 in connection with his
12 purchases of STEC securities and expended approximately \$109,090 in purchasing
13 STEC securities during the Class Period as a result of defendants' materially false
14 and misleading statements and omissions. *See id.* Movant submitted a signed,
15 sworn certification as required by §21D(a)(2)(A)(i)-(vi) of the Exchange Act with
16 the complaint Movant filed in this action, *Fischer v. STEC, Inc., et al.*, Case No.
17 CV-09-8536 JVS (MLGx), filed on November 19, 2009. *See Parker Decl., Ex. C.*

18 To Movant's current knowledge, this financial interest makes him the
19 proposed lead plaintiff with the largest financial stake in this action, a fact which
20 warrants a presumption that he is the "most adequate plaintiff" in this case pursuant
21 to §21D of the Exchange Act. *Cavanaugh*, 306 F.3d at 730 ("[T]he district court
22 must compare the financial stakes of the various plaintiffs and determine which one
23 has the most to gain from the lawsuit."); *see also Apple*, 2008 U.S. Dist. LEXIS
24 12618, at *7.

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c. Movant Meets the Requirements of Rule 23 of the Federal Rules of Civil Procedure

Section 21D(a)(3)(B)(iii)(I)(cc) of the Exchange Act further provides that, in addition to possessing a significant financial interest in the relief sought by the class, the lead plaintiff must also “otherwise satisf[y]” the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc).

With respect to the qualifications of the class representatives, Rule 23(a) requires generally that their claims be typical of the claims of the class and that the representatives will fairly and adequately protect the interests of the class. *See* Fed. R. Civ. P. 23(a). As detailed below, Movant satisfies the typicality and adequacy requirements of Rule 23(a) and is qualified to be appointed Lead Plaintiff.

1. Movant’s Claims are Typical of the Claims of the Class

The typicality requirement of Rule 23(a)(3) is satisfied when the representative plaintiff’s claims arise out of the same event or course of conduct as do the other class members’ claims, and are based on the same legal theories. *See Apple*, 2008 U.S. Dist. LEXIS 12618, at *16-*17. The threshold typicality and commonality requirements are not high. Rule 23(a) requires only that resolution of the common questions affect all or a substantial number of class members. *Id.* The questions of law and fact common to the members of the class which predominate over questions which may affect individual class members include, *inter alia*, the following:

1. whether defendants’ alleged acts or omissions violated the federal securities laws;
2. whether defendants’ public statements during the Class Period misrepresented material facts about the Company;
3. whether defendants knew, had reason to know, or recklessly disregarded that their statements were false and misleading;

1 4. whether the price of STEC securities was artificially inflated during the
2 Class Period; and

3 5. to what extent the members of the class have sustained damages and the
4 proper measure of such damages.

5 There is a well-defined community of interest in the questions of law and fact
6 involved in this case, of which Movant is a part. Movant, as well as the other
7 members of the class, alleges that defendants violated the Exchange Act and SEC
8 Rule 10b-5 by publicly disseminating materially false and misleading statements, as
9 well as omitting material facts about the Company required to make those
10 statements not misleading, during the Class Period. As a result of defendants'
11 alleged fraudulent representations and omissions, Movant, and the other members of
12 the class, purchased STEC securities at artificially inflated prices and were damaged
13 thereby. Because the claims asserted by Movant are premised on the same legal and
14 remedial theories and are based on the same types of alleged misrepresentations and
15 omissions as the claims of the class, typicality is satisfied here. *See* 7 Herbert
16 Newberg & Alba Conte, *Newberg on Class Actions*, §22.24 at 107-108 (4th ed.
17 2002) (“[t]he majority of class action decisions support the view that when it is
18 alleged that the same unlawful conduct was directed at or affected both the named
19 plaintiff and the class sought to be represented, the typicality requirement is met”).

20 **2. Movant Will Fairly and Adequately Represent**
21 **the Interests of the Class**

22 Movant’s interests clearly are aligned with those of the other members of the
23 class and there is no antagonism between his interests and the interests of the other
24 members of the class. Movant amply has demonstrated his adequacy as class
25 representative by filing a complaint in this action and by signing a sworn
26 certification affirming his willingness to serve as, and assume the responsibilities of,
27 class representative. *See* Parker Decl., Ex. C.
28

1 In addition, Movant has selected counsel highly experienced in prosecuting
 2 securities class actions to represent himself and the class. *See* Parker Decl., Exs. D
 3 and E. Accordingly, Movant, as well as his counsel, satisfies the requirements of
 4 Rule 23 and all of the PSLRA's prerequisites for appointment as Lead Plaintiff in
 5 this action, and, accordingly, should be appointed Lead Plaintiff pursuant to 15
 6 U.S.C. §78u-4(a)(3)(B). *See Apple*, 2008 U.S. Dist. LEXIS 12618, at *17-*18.

7 **2. This Court Should Approve Movant's Choice of Lead** 8 **Counsel**

9 The PSLRA vests authority in the lead plaintiff to select and retain counsel to
 10 represent the class, subject to court approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v).
 11 The court should not disturb the lead plaintiff's choice of counsel unless necessary
 12 to "protect the interests of the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa); *see*
 13 *also Cohen v. District Court*, 586 F.3d 703, 712 (9th Cir. 2009); *Cavanaugh*, 306
 14 F.3d at 732-33 n.11 ("the district court must approve the lead plaintiff's choice of
 15 counsel, but Congress gave the lead plaintiff, and not the court, the power to select a
 16 lawyer for the class").

17 Movant has selected the law firms of Weiss & Lurie and Stull, Stull & Brody
 18 to serve as Co-Lead Counsel for the class. Movant's chosen counsel possess
 19 extensive experience in litigating securities class actions and have successfully
 20 prosecuted numerous securities class actions on behalf of injured investors. *See*
 21 Parker Decl., Exs. D and E. As a result, this Court may be assured that the members
 22 of the class will receive the highest caliber of legal representation available.

23 **IV. CONCLUSION**

24 For all the foregoing reasons, Movant respectfully requests that this Court:
 25 (i) appoint Movant as Lead Plaintiff in this action; (ii) approve Movant's selection

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1 of the law firms of Weiss & Lurie and Stull, Stull & Brody to serve as Co-Lead
2 Counsel for the class; and (iii) grant other such relief as the Court may deem just
3 and proper.

4
5 DATED: January 5, 2010

6 /s/ - Leigh A. Parker

Jordan L. Lurie

Leigh A. Parker

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